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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

MOSDOS CHOFETZ CHAIM INC.,

Debtor.

Chapter 11 - Post Confirmation

Case No. 12-23616-rdd

CONGREGANTS OF MOSDOS CHOFETZ CHAIM
INC. A/K/A KIRYAS RADIN,

Plaintiffs,

-against-

MOSDOS CHOFETZ CHAIM INC., CHOFETZ
CHAIM INC., TBG RADIN LLC, SHEM OLAM,
LLC, CONGREGATION RADIN DEVELOPMENT
INC., ARYEH ZAKS, BEATRICE WALDMAN
ZAKS, MENDEL ZAKS, GITTEL ZAKS
LAYOSH, ELIYAHU LAYOSH, SAMUEL
MARKOWITZ, DEBORAH ZAKS HILLMAN, YOM
T. HENIG, STEVEN GREEN, DANIEL GREEN,
ABRAHAM ZAKS and STERLING NATIONAL
BANK,

Defendants.

Adv. Pro. No. 21-7023-rdd

**APPELLANT'S STATEMENT OF ISSUES TO BE PRESENTED AND DESIGNATION
OF ITEMS TO BE INCLUDED IN THE RECORD ON APPEAL**

Pursuant to Rule 8009 of the Federal Rules of Bankruptcy Procedure, and Rule 8009-1 of the Local Rules of the Southern District of New York, Rabbi Mayer Zaks submits this statement of issues to be presented and designation of items to be included in the record on appeal with respect to the appeal from the order signed and docketed on May 24, 2021 [DE-22] (the “Order”) granting, in part, the motion [DE-3] of defendants, Mosdos Chofetz Chaim, Inc. (“Mosdos”), Chofetz Chaim Inc. (“CCI”), Congregation Radin Development Inc. (“CRDI”), and Rabbi Aryeh Zaks (collectively “Movants”) for an order granting omnibus relief including, *inter alia*, the issuance of an order of protection pursuant to Rule 65 of the Federal Rules of Civil Procedure incorporated by Fed. R. Bankr. P. 7065 (the “Rule 65 Motion”).

I. Statement of Issues to be Presented on Appeal.

1. Whether the Bankruptcy Court erred by granting the Rule 65 Motion.
2. Whether the Bankruptcy Court lacked subject matter and personal jurisdiction to grant the injunctive relief as against Rabbi Mayer Zaks under Rule 65 in this closed post-confirmation matter.
3. Whether the Bankruptcy Court possessed jurisdiction over this post-confirmation dispute and whether the dispute has a close nexus to the plan or other rulings made by the Bankruptcy Court made part of or confirmed by the plan.
4. Whether the Bankruptcy Court erred by determining that it possessed jurisdiction under 28 U.S.C. §§ 157(a)-(b) and 1334(b), the confirmed Chapter 11 Plan in this case and its Order Confirming the Plan to grant the injunctive relief requested by the Rule 65 Motion.
5. Whether the Bankruptcy Court erred by granting injunctive relief under Rule 65.
6. Whether the Order had the effect of depriving Rabbi Mayer Zaks of his right to the free exercise of religion or unconstitutionally establishing religion.

II. Designation of Items to be Included in the Record on Appeal

Appellant, Rabbi Mayer Zaks designates the following items for inclusion in the record on appeal. Each designated item shall also include any and all exhibits and documents annexed to and referenced with such items.

A copy of the transcript of the May 21, 2021 hearing [DE 28] is annexed as exhibit A.

A. Documents Filed in U.S. Bankruptcy Court, Southern District of New York (White Plains), Adversary Proceeding No.: 21-07023-rdd

Filing Date	#	Docket Text
04/22/2021	1 (62 pgs; 8 docs)	Adversary case 21-07023. Copy of Certified Order Transferring Case No. 7:21-cv-3390 (NSR) from the U.S. District Court, S.D.N.Y. to the U.S. Bankruptcy Court, S.D.N.Y. (Receipt Number 24414274, Fee Amount \$ 350.). Nature(s) of Suit: (02 (Other (e.g. other actions that would have been brought in state court if unrelated to bankruptcy))) Filed by Congregants of Mosdos Chofetz Chaim, Inc.. (Attachments: # 1 Exhibit Doc 2 Civil Cover Sheet # 2 Exhibit Doc 3 Letter # 3 Exhibit Doc 4 Letter # 4 Exhibit Doc 5 Order # 5 Exhibit Doc 6 Certificate of Service # 6 Exhibit SDNY Transfer Order # 7 Exhibit SDNY Docket Sheet) (Pisarczyk, Gladys) (Entered: 04/22/2021)
04/22/2021	3 (87 pgs; 6 docs)	Omnibus Motion for Sanctions <i>with exhibits</i> (related document(s) 2) filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Attachments: # 1 Exhibit 1 - Original Notice of Order - 3-8-21 # 2 Exhibit 2 - State Court Petition Withdrawal Notice # 3 Exhibit 3 - District Court denial of TRO Application # 4 Exhibit 4 - New State Court Action Compliant (removed) # 5 Exhibit 5 - New State Court Petition) (Levine, Michael) (Entered: 04/22/2021)

04/22/2021	<u>4</u> (14 pgs; 2 docs)	Declaration of Henoch Zaks in support of motion for omnibus relief and motion for sanctions (related document(s) <u>2</u> , <u>3</u>) filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Attachments: # <u>1</u> Exhibit 1 - Notice to Trespassers) (Levine, Michael) (Entered: 04/22/2021)
04/24/2021	<u>7</u> (8 pgs; 2 docs)	Supplemental Declaration attaching State Court temporary restraining order sought to be vacated filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Attachments: # <u>1</u> Exhibit State Court TRO) (Levine, Michael) (Entered: 04/24/2021)
04/26/2021	<u>8</u> (156 pgs; 6 docs)	Declaration In Opposition to Motion filed by Brian K. Condon on behalf of Congregants of Mosdos Chofetz Chaim, Inc.. with hearing to be held on 4/28/2021 at 10:00 AM at Courtroom TBA, White Plains Courthouse (RDD) (Attachments: # <u>1</u> Exhibit April 16, 2021 Order to Show Cause signed by Hon. Robert M. Berliner, J.S.C. # <u>2</u> Exhibit April 16, 2021 Letter from Michael Levine to Ariel Dahan, Esq. # <u>3</u> Exhibit Urgent Notice # <u>4</u> Exhibit Transcript March 26, 2021 Hearing (Adv. Pro. No. 20-08949-rdd) # <u>5</u> Exhibit April 2, 2021 Order Granting Motion Hon. Robert D. Drain) (Condon, Brian) (Entered: 04/26/2021)
04/27/2021	<u>9</u> (12 pgs)	Joint Reply to Motion opposition by Plaintiff on motion to vacate TRO (related document(s) <u>3</u>) filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 04/27/2021)
04/29/2021	<u>10</u> (2 pgs)	Order signed on 4/29/2021 Granting Motion Vacating Temporary Restraining Order (Related Doc # <u>5</u>) . (Vargas, Ana) (Entered: 04/29/2021)
05/04/2021	11	Transcript regarding Hearing Held on 04/28/21 at 12:07 P.M. RE: Hearing On Vacate Tro Re Omnibus Motion To Dismiss Adversary

		Proceeding Vacate Tro, Impose Contempt Sanctions And Issue An Order Of Protection, Filed By Michael Levine On Behalf Of Chofetz Chaim Inc. (Ecf #2); Related Documents To Motion To Vacate Tro, Supplemental Declaration Attaching State Court Temporary Restraining Order Sought To Be Vacated, Filed By Michael Levine On Behalf Of Chofetz Chaim Inc. (Ecf #7) Etc. Remote electronic access to the transcript is restricted until 8/2/2021. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: AA EXPRESS TRANSCRIPTS]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) 2 , 9 , 4 , 5 , 3 , 7 , 8). Notice of Intent to Request Redaction Deadline Due By 5/11/2021. Statement of Redaction Request Due By 5/25/2021. Redacted Transcript Submission Due By 6/4/2021. Transcript access will be restricted through 8/2/2021. (Su, Kevin) (Entered: 05/04/2021)
05/06/2021	12 (32 pgs; 7 docs)	Joint Motion to Shorten Time for hearing on Defendants' motion for Order of Protection filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Attachments: # 1 Pleading Local Rule 9007-1 Declaration # 2 Pleading Rabbi Aryeh Zaks Declaration # 3 Exhibit Exhibit 1 to Aryeh Zaks Declaration # 4 Pleading Gershon Zaks Declaration # 5 Pleading Benezra Declaration # 6 Pleading Hillman Declaration) (Levine, Michael) (Entered: 05/06/2021)
05/07/2021	13 (3 pgs)	Notice of Hearing of (i) motion for order of protection, and (ii) shortened notice filed by Michael Levine on behalf of Chofetz Chaim Inc.. with hearing to be held on 5/21/2021 at 10:00 AM at Teleconference Line (CourtSolutions) (RDD) (Levine, Michael) (Entered: 05/07/2021)
05/07/2021	14	Affidavit of Service of Notice of Hearing on

	(2 pgs)	motion for order of protection and shortened notice (related document(s) 13) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 05/07/2021)
05/07/2021	15 (2 pgs)	Affidavit of Service of Motion for shortened notice (related document(s) 12) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 05/07/2021)
05/07/2021	16 (3 pgs)	Amended Notice of Hearing on motion for Order of Protection and shortened time filed by Michael Levine on behalf of Chofetz Chaim Inc.. with hearing to be held on 5/21/2021 at 10:00 AM at Teleconference Line (CourtSolutions) (RDD) (Levine, Michael) (Entered: 05/07/2021)
05/19/2021	17 (7 pgs)	Supplemental Affirmation in further support of motion for Order of Protection and Hearing on Shortened Notice (related document(s) 12, 3) filed by Michael Levine on behalf of Chofetz Chaim Inc.. with hearing to be held on 5/21/2021 (check with court for location) (Levine, Michael) (Entered: 05/19/2021)
05/19/2021	18 (2 pgs)	Affidavit of Service of Supplemental Affirmation of Rabbi Aryeh Zaks [DE-17] (related document(s) 12, 3) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 05/19/2021)
05/21/2021	19 (2 pgs)	Letter to Honorable Robert D. Drain dated May 21, 2021 in connection with a "Proposed Order" Filed by Marc S. Oxman on behalf of Marc S. Oxman. (Oxman, Marc) (Entered: 05/21/2021)
05/24/2021	20 (8 pgs)	Declaration filed by Anne J. Penachio on behalf of Ariel Dahan. (Penachio, Anne) (Entered: 05/24/2021)
05/24/2021	21 (5 pgs)	Letter responding to post-hearing submissions Filed by Michael Levine on behalf

		of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 05/24/2021)
05/24/2021	<u>22</u> (4 pgs)	Order Signed on 5/24/2021 Granting Injunctive Relief (Related document(s) 3 12). (Li, Dorothy) Modified on 5/24/2021 (Correa, Mimi). (Entered: 05/24/2021)
05/25/2021	<u>23</u> (10 pgs)	Notice of Appeal (related document(s) 22) filed by Marc S. Oxman on behalf of Mayer Zaks. (Oxman, Marc) (Entered: 05/25/2021)
05/25/2021		Receipt of Notice of Appeal(21-07023-rdd) [appeal,97] (298.00) Filing Fee. Receipt number A15369436. Fee amount 298.00. (Re: Doc # 23) (U.S. Treasury) (Entered: 05/25/2021)
05/25/2021	<u>24</u> (5 pgs)	Modified Order signed on 5/25/2021 Granting Injunctive Relief (related document(s) 22). (Correa, Mimi) (Entered: 05/25/2021)
05/25/2021	<u>25</u> (6 pgs)	Notice of Entry of Judgment - Docketing of Injunction Order (related document(s) 24) filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 05/25/2021)
05/25/2021	<u>26</u> (2 pgs)	Affidavit of Service of Notice of Docketing of Modified Injunction Order (related document(s) 25) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Levine, Michael) (Entered: 05/25/2021)
05/26/2021	28	(THIS TRANSCRIPT HAS BEEN AMENDED, SEE DOCUMENT # 44 FOR CORRECT ENTRY) Transcript regarding Hearing Held on 05/21/21 at 10:50 A.M. RE: Joint Motion To Shorten Time For Hearing On Defendants' Motion For Order Of Protection Filed By Michael Levine On Behalf Of Chofetz Chaim Inc. (Ecf #12); Supplemental Affirmation In Further Support Of Motion For Order Of Protection And Hearing On Shortened Notice (Related Docs 12, 3). Remote

		<p>electronic access to the transcript is restricted until 8/24/2021. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: AA EXPRESS TRANSCRIPTS]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) 12, 3). Notice of Intent to Request Redaction Deadline Due By 6/2/2021. Statement of Redaction Request Due By 6/16/2021. Redacted Transcript Submission Due By 6/28/2021. Transcript access will be restricted through 8/24/2021. (Su, Kevin) Modified on 6/4/2021 (Ortiz, Carmen). (Entered: 05/26/2021)</p>
05/28/2021	29 (209 pgs)	Declaration Regarding May 21, 2021 Spectator Appearance at Hearing filed by James B. Glucksman on behalf of James B. Glucksman. (Glucksman, James) (Entered: 05/28/2021)
05/28/2021	30 (1 pg)	Letter to the Court dated May 28, 2021 (related document(s) 28) Filed by Mayer Zaks. (Li, Dorothy) (Entered: 05/28/2021)
06/01/2021	31 (1 pg)	Letter dated May 28, 2021 to the Court to Correct AP # in previous letter (related document(s) 30) Filed by Mayer Zaks. (Li, Dorothy) (Entered: 06/01/2021)
06/01/2021	32 (3 pgs)	Notice of Hearing of (i) motion for order of protection, and (ii) shortened notice filed by Michael Levine on behalf of Chofetz Chaim Inc.. with hearing to be held on 5/21/2021 at 10:00 AM. [Re-Docket document #13 as per the Court's Instruction] (Li, Dorothy). (Entered: 06/01/2021)
06/01/2021	33 (3 pgs)	Affidavit of Service (related document(s) 32) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Li, Dorothy) (Entered: 06/01/2021)
06/01/2021	34	[Wrong pdf attachment--refer to Doc.]

	(2 pgs)	37] Amended Notice of Hearing on motion for Order of Protection and shortened time filed by Michael Levine on behalf of Chofetz Chaim Inc.. with hearing to be held on 5/21/2021 at 10:00 AM [Re-docketed Document #16 as per instructed by the Court]. (Li, Dorothy). Modified on 6/3/2021 (Correa, Mimi). (Entered: 06/01/2021)
06/01/2021	<u>35</u> (2 pgs)	Affidavit of Service Affidavit of Service of Supplemental Affirmation of Rabbi Aryeh Zaks [DE-17] (related document(s)12, 3) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Li, Dorothy) (Entered: 06/01/2021)
06/01/2021	<u>36</u> (2 pgs)	Affidavit of Service of Notice of Hearing on motion for order of protection and shortened notice (related document(s)13) Filed by Michael Levine on behalf of Chofetz Chaim Inc.. (Li, Dorothy) (Entered: 06/01/2021)
06/03/2021	44	Amended Transcript regarding Hearing Held on 05/21/21 at 10:50 A.M. RE: Joint Motion To Shorten Time For Hearing On Defendants' Motion For Order Of Protection Filed By Michael Levine On Behalf Of Chofetz Chaim Inc. (Ecf #12); Supplemental Affirmation In Further Support Of Motion For Order Of Protection And Hearing On Shortened Notice (Related Docs 12, 3). Remote electronic access to the transcript is restricted until 9/1/2021. The transcript may be viewed at the Bankruptcy Court Clerks Office. [Transcription Service Agency: AA EXPRESS TRANSCRIPTS.]. (See the Courts Website for contact information for the Transcription Service Agency.) (RE: related document(s) <u>12, 3</u>). Notice of Intent to Request Redaction Deadline Due By 6/10/2021. Statement of Redaction Request Due By 6/24/2021. Redacted Transcript Submission Due By 7/6/2021. Transcript access will be restricted through 9/1/2021. (Su, Kevin) (Entered: 06/04/2021)

B. Documents Filed in U.S. Bankruptcy Court, Southern District of New

York (White Plains), Adversary Proceeding No.: 20-08949-rdd

03/26/2020	<u>17</u> (5 pgs)	Order signed on 3/26/2020 (A) Denying Plaintiffs Motion for Remand, or Alternatively, for the Appointment of a Receiver and (B) Issuing Injunctive Relief Pending Determination of Contested Issues.(Related Doc # 6) (McCaffrey, Dawn) (Entered: 03/26/2020)
04/02/2021	<u>149</u> (5 pgs)	Order Signed on 4/2/2021 Granting Motion of Defendants Mosdos Chofetz Chaim Inc. and Rabbi Aryeh Zaks To Dismiss Adversary Proceeding Complaint After Trial and Related Relief (Related Doc # 136) . (Li, Dorothy) (Entered: 04/02/2021)

C. Documents Filed in U.S. Bankruptcy Court, Southern District of New York (White Plains) Case No.:12-23616-rdd

8/16/2019	<u>283</u> (79 pgs; 2 docs)	Second Amended Plan - SECOND AMENDED PLAN OF REORGANIZATION OF MOSDOS CHOFETZ CHAIM, INC. (related document(s) 267 , 277) filed by Arnold Mitchell Greene on behalf of Mosdos Chofetz Chaim Inc.. (Attachments: # 1 Redline of Amended Plan versus Second Amended Plan)(Greene, Arnold) (Entered: 08/16/2019)
08/16/2019	<u>284</u> (86 pgs; 2 docs)	Second Amended Disclosure Statement - SECOND AMENDED DISCLOSURE STATEMENT FOR SECOND AMENDED PLAN OF REORGANIZATION OF MOSDOS CHOFETZ CHAIM, INC. (related document(s) 278 , 268) filed by Arnold Mitchell Greene on behalf of Mosdos Chofetz Chaim Inc.. (Attachments: # 1 Redline of Amended DS versus Second Amended DS)(Greene, Arnold) (Entered: 08/16/2019)
10/02/2019	<u>308</u> (18 pgs; 2 docs)	Order signed on 10/2/2019 Confirming Second Amended Plan of Reorganization of Mosdos Chofetz Chaim, Inc. (related document(s) 283 , 284) (McCaffrey, Dawn) (Entered: 10/02/2019)
10/03/2019	<u>309</u>	Affidavit of Service of Tina Fogel for Notice of

	(8 pgs)	Effective Date and Notice of Confirmation (related document(s)308) Filed by Arnold Mitchell Greene on behalf of Mosdos Chofetz Chaim Inc.. (Greene, Arnold) (Entered: 10/03/2019)
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Dated: White Plains, New York
June 3, 2021

Respectfully submitted,

ABRAMS, FENSTERMAN, FENSTERMAN,
EISMAN, FORMATO, FERRARA, WOLF &
CARONE, LLP

By: 

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